U. S. Department of Housing and Urban Development

Special Attention of:

Regional Directors, Field Office Directors,
Economists, Public & Indian Housing
Division Directors, Multifamily Hub Directors,
Multifamily Program Center Directors

NOTICE PDR-2009-03

Issued: March 19, 2009
Expires: Effective until superseded

Cross References:

Subject: Transmittal of Fiscal Year 2009 Income Limits for the Section 221(d)(3) Below Market Interest Rate rental program, Section 235, and Section 236 Programs

This notice transmits revised income limits used to determine the income eligibility of applicants for assistance under three programs authorized by the National Housing Act. These programs are the Section 221(d)(3) Below Market Interest Rate (BMIR) rental program, the Section 235 program, and the Section 236 program. These income limits are listed by dollar amount and family size, and they are effective on the date issued.

This year's estimates are the first to take advantage of the Census Bureau's American Community Survey (ACS) three-year data collected between 2005 and 2007. The ACS is the official replacement for the foundation of median family income information: the decennial census "long form" sample. Three-year estimates represent a significant improvement over the one-year estimates used for FY2007 and FY2008 median family incomes and Income Limits. The advantages of three-year estimates include larger sample sizes and greater population coverage. Because sample sizes are larger, margins of error in survey results are smaller which means there is less survey error. Additionally, three-year estimates are available for geographic areas with 20,000 or more in population; therefore, over 95 percent of the national population is covered by these data. Finally, since they represent data spanning three years, not just data from 2007, these estimates, in general, are not quite as high as they would be if only 2007 data were used. This is important because, due to the lag in data availability, HUD must use 2007 or earlier data, which reflect a time of economic expansion instead of the current economic downturn.

Two additional changes were made to the methodology for updating median family incomes for FY2009. Both changes were made in order to improve the stability of estimates from one year to the next. First, surveys with margins of error between 10 percent and 20 percent are not being used to update medians as they were in FY2007 and FY2008. There are very few areas with survey margins of error in this range, but where the margin of error is greater, the estimates tend to be significantly more variable from one-year to the next. Second, use of Bureau of Labor Statistics (BLS) data is no longer necessary. BLS data were used to generate inter-state variation in estimates for areas without ACS surveys. Because so much of the nation's population is covered by three-year ACS estimates, use of BLS data is no longer necessary.

Historically, HUD has held Section 8 Income Limits harmless primarily so that Low Income Housing Tax Credit (Internal Revenue Code section 42) and bond-financed projects (I.R.C. section 142) would not be subject to reductions in income qualification levels and maximum rents. Low Income Housing Tax Credit (LIHTC) and tax exempt bond-financed housing project income limits and rents are tied by statute to HUD's area median income estimates, and by regulation to HUD's Section 8 Income Limits.

Section 3009 of HERA provides for immediate holding harmless of "area median gross income" for tax credit and tax-exempt bond-financed housing projects with additional inflation provisions for LIHTC and bond-financed projects held harmless by HUD in 2007 and 2008. Because the new law provides a statutory mechanism for achieving the effect of the income limit hold-harmless policy HUD no longer plans to hold income limits harmless.

HUD plans to issue a Federal Register Notice to this effect but has not yet done so. Consequently, HUD will continue to hold Section 8 income limits at previous year's levels in areas where median family income estimates are lower in FY2009 than in FY2008 but will not continue to do so in future years.

The revised income limits are based on HUD estimates of MFI for FY 2009. The income limits used for the Section 236 program are currently the same as the Public Housing/Section 8 low-income limits, which are defined by Section 3(b)(2) of the United States Housing Act of 1937. These income limits are normally set at 80 percent of area median family income for a four-person family, and adjusted for family size and unusually high or low housing costs. There are, however, situations where they are adjusted upward or downward.

Most four-person Section 236 limits are set at the greater of: 80 percent of the area median family income, or 80 percent of the state non-metropolitan median family income level. Because the Section 8 very low-income limits are not always based on 50 percent of median, calculating low-income limits as 80 percent of median would sometimes produce anomalies inconsistent with statutory intent (e.g., very low-income limits could be higher than low-income limits). To avoid this, the four-person low-income limit is calculated as 1.6 (80 percent/50 percent) times the four-person very low-income limit. The only exception is that the resulting income limit may not exceed the U.S. median family income level ($64,000 for FY2009) except when justified by high housing costs. Use of very low-income limits as a starting point for calculating other income limits has the effect of adjusting other income limits in areas where the very low-income limits have been adjusted because of unusually high or low housing-cost-to-income relationships.

The Section 221(d)(3)BMIR income limits, which serve "individuals and families of low- and moderate-income," are set at 95 percent of median, adjusted for family size. These income limits are also adjusted for unusually high or low area housing costs, and use the HUD low-income limits as a basis for calculations. For instance, rather than the four-person limit being set at 95 percent of the local median family income amount, it is set as 95/80ths of the four-person low-income limit.

Section 235 states that income limits are to be defined as "95 per centum of the median income for the area, as determined by the Secretary with adjustments for larger and smaller families..." These income limits are identical to Section 221(d)(3)BMIR income limits except in instances where the Secretary has used his discretion to permit higher income limits to reflect high area construction costs.

For areas where income limits would otherwise decline, the BMIR and Section 235 income limits are frozen at the previous year's income limit. This is done to simplify program management.

Family Size Adjustments:

By statute, family size adjustments are required to provide higher income limits for larger families and lowerlimits are frozen at the previer fa." These i

HUD Field Office Responsibilities:

HUD field offices with assisted housing functions are responsible for maintaining records of income limits for areas within their jurisdiction. Notice of all income limit revisions should be promptly distributed to program participants, and field offices should be prepared to make income limits available to the public upon request. These income limits are also available on the World Wide Web (**www.huduser.org/datasets/il.html**).

FY2009 income limits are available in multiple formats on the World Wide Web (**www.huduser.org\datasets\il.html**). Questions related to how these income limits apply to the programs of state and other federal agencies should be referred to those agencies. Questions concerning the methodology used to develop these income limits are addressed in the FY2009 Income Limits Briefing Material, which is posted on the income limits website.

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